

Criminal Justice Collaborating Council – Alcohol Workgroup
Thursday, January 8, 2009

Judge Davis called the meeting to order at 12:07 p.m.

Committee Members Present: Judge Mac Davis (Chair), Mickey Gabbert, Connie Acheson, Claudia Roska, Lindsay Desormier, JoAnn Eiring, Peter Schuler, Mike DeMares, Tim Westphal, John Wirkus and Peter Schuler.

Also Present: Lindsay Johnson and Rebecca Luczaj.

Introductions

Approval of Minutes from 12/18/08

The minutes of December 18, 2008, were approved by unanimous consent.

Proactive Discussion of Potential OWI Legislation Changes

- **Potential Impacts (on attorneys, Courts, Jails, Probation & Parole, Service Providers, etc.)**
- **Potential Solutions**

Schuler stressed the importance of preparing for potential program adjustments in anticipation of the possible legislation changes. Advance planning would be beneficial with regard to increases in admission rates to programs, as well as the increase in willingness to participate in Alcohol Treatment Court.

Davis discussed the issues from the legislative perspective. He speculated that it is likely that the threshold for a felony would be lowered to a fourth OWI offense (from the current fifth offense). This would not necessarily mean longer sentencing; however, there may be a drift up in the length of sentencing. He discussed possible cost increases (State prison versus County jail), dependent on whether or not sentencing practices change. Davis addressed the issue of making a first offense OWI a crime. There is some political resistance to it, and there is not much advantage to it except to say the offender has been convicted of a crime, and most likely would not result in a jail sentence if not made mandatory. As the legislature examines the practices in other states, the laws may look stricter, but they actually are not. Some states have mandatory jail sentences for first and second offenders, but their interpretation of that might be community service work. In Wisconsin, a jail sentence generally means actual time locked up. Some states wipe first offenses off the record after a period of time, which Wisconsin does not do. Davis continued to review the variability in sentencing that may arise when looking at the number and severity of offenses within a given timeframe. He added that mandatory sentencing is favored in the legislature, but there is resistance to it from the institutional and judiciary perspective.

Roska commented on the issue of criminalization of a first offense OWI and the concept of basing the sentencing on the BAC level rather than number of offenses. A high BAC first offense might come with a jail sentence and/or an extra fine, versus a marginal/low BAC first offense. She heard that there is a great deal of plea-bargaining done in other states where there is criminal first offense, which makes comparison difficult. Roska opined that if Wisconsin would change its intoxicated driver laws, a study would need to be done to determine if it actually reduces the number of offenses and/or the rate of multiple offenses. Data must be analyzed to prove its effectiveness and justify the costs. It is not fair to compare Wisconsin to other states due to the culture of drinking in this state. She voiced her support for any legislation that would actually influence and reduce intoxicated driving. However, it is important not to just pass legislation, but look at whether it changes behavior relative to drinking and driving.

Desormier referred to statistics that rate Wisconsin as the worst in drinking and driving, while being the only state that does not have a first offense as a crime. Wisconsin is one of the only states that have the majority of its fatalities caused by people without prior offenses. She stated that we do need more data; however, Wisconsin is unique in those areas and there is a need to do something. Roska agreed, adding that Wisconsin is also rated first for binge drinking and drinking during pregnancy, and that is an important factor to consider.

Gabbert spoke of the cultural issues in the State that encompass the consumption of alcohol – what made Milwaukee famous, the name of our baseball team, the name of our stadium, etc. He stated that a singular answer to this problem is not going to work. There must be a continuum of services and requirements, from the least to most restrictive alternatives, including jail or prison, and halfway houses which would also require treatment. Gabbert referred to statistics that report 80% of first DUI offenders are not chemically dependent, but 80% of second offenders are. We must look at how to differentiate these cases – perhaps BAC level is an important factor to consider. What are we going to do to try to impact society as a whole?

Wirkus stated that many of the patients seen at Cornerstone Counseling were arrested after coming from a tavern or restaurant. There are no postings in such establishments that inform patrons of the number of drinks and the effects on BAC. Most people don't know how many drinks it would take to put them over the legal limit. Why isn't there a law to require posting such information? Further discussion continued on the effects of alcohol and the resulting impaired judgment in making the decision to drive. Wirkus agreed that the tolerance factor varies with individuals. Eiring suggested that perhaps a poster warning not to drive if you have had more than two drinks might get people's attention. Though a chemically dependent person would not respond, perhaps it would prevent potential first offenders from driving.

Davis addressed the potential loss of revenue to the municipal courts around the State with the new law. There would be thousands of additional cases coming through the circuit courts, which would require additional time of the judges, district attorneys and other staff. Westphal added that the District Attorneys are concerned because the State most likely would not provide funding for additional prosecutors. He stated that the system would adjust to the increased amount of offenders; however, the more work put on the same amount of people, the quality of the prosecution, handling motions, complaints, processing, etc, would go down. Westphal addressed the problem of experienced prosecutors leaving because of the lack of opportunity for advancement in their careers. The experienced prosecutor is able to provide the judge better, more direct information at the time of sentencing. The less experienced prosecutors often cannot cope with the volume of cases and it becomes harder to present quality sentencing arguments. The less effective information given to the judge, the less effective the sentence may be. Perhaps raising the tax on liquor/beer could provide more funding for prosecutors.

Davis stated that another subject being discussed is requiring use of ignition interlocks more often. Eiring stated she has heard they do not work very well. Davis agreed, noting he has heard there have been technical problems causing the devices to malfunction. The interlock would be a good means for extending the length of time for monitoring an offender to eighteen months or more. Schuler stated he believes in longer monitoring of offenders - after jail, after treatment, after interlock. He said they should be required to come back for further testing to show whether they have been successful in staying away from alcohol.

Brainstorming/Discussion of Potential Action Plan/Model to Address Alcohol-Related Offenses System-Wide

Davis suggested redirecting the discussion by having each Workgroup member share their ideas on things that Waukesha County, relative to Courts or Human Services, could or should do to address alcohol-related offenses.

Schuler stated that he is in favor of seeing the requirement of treatment, putting monitoring systems in place early on, and more long-term monitoring and testing.

Davis suggestions included Alcohol Treatment Court, WCS monitoring, and possibly the use of helpful methods such as specialized treatment drugs.

Wirkus favored the treatment courts, and making the requirement or offering access to more of the population whom have been arrested for multiple offenses.

Roska would like to see decisions made based on diagnostic impressions versus the number of offenses. For example, a 3rd time offender most likely will need treatment, but perhaps not. Treatment for a 3rd time offender who is not alcohol dependent is a waste of time. Those differences need to be incorporated to determine the appropriate treatment, whether they are alcohol dependent or not. Possible alternatives could include longer supervision, behavioral modification, or ongoing random blood/breath tests.

Gabbert spoke of the importance of communicating openly, and realizing the domino effect of how implementing one thing may impact another. He suggested becoming less territorial about focusing on our own areas of expertise; be aware and work with courts, district attorney, and probation. He stressed the importance of educating the young as well as the older adults about alcohol and drug abuse, and educating physicians about substance abuse and substance dependency. Gabbert added that as a recovering alcoholic and addict, he sees the need to work on reducing the stigma of addiction and increasing talk about recovery.

Westphal addressed the idea of a traffic court. Ideally, the court would be provided with the most information possible from the prior OWI files, including facts of the severity of prior offenses. If the information is there, the court should have it. The facts of a prior offense could have a big impact on the judge's decision. Westphal stated that the difficulty arises in trying to obtain details of a prior case if the offense had occurred in another municipality. C-CAP is a beginning, but it does not provide the necessary detailed information.

Eiring stated she would like to see stiffer sanctions and more consistency in sentencing for alcohol related offenses. Davis suggested that WCS could change the final report form that is sent to the sentencing court. It could include a recap of the offender's prior record and whether the offense should be considered aggravated for sentencing purposes.

Acheson spoke about the non-compliance issue. She said they see a lot of bail jumping charges and OAR's that result from drinking while on supervision being dismissed. Regarding 3rd and 4th OWI offenses, most inmates are going to Huber; perhaps County jail would be more of a deterrent, followed by Huber and electronic monitoring.

DeMares spoke about individuals who are repeat offenders; their sentences are often too lenient. Even after serving a prison sentence, there are repeat offenders of 6-7 times; perhaps they don't spend enough time under sanctions. He suggested that a longer period of treatment and surveillance would be effective. Treatment with community intervention or mandatory AA meetings with a surveillance component might

get and keep their attention. AA is free and widely available. Davis added that there is some proof the mandatory treatment is effective in some cases.

Desormier would like to see a victim impact panel for all offenders, starting with the 1st offense. (It is currently for 3rd time OWI offenders in Waukesha County). The point of a panel is targeted for a 1st time offender; they were designed to get offenders to not repeat the behavior. She stated that a key part of the population is being missed by not offering the victim impact panel to 1st offenders.

Luczaj stated she favors the alcohol treatment court model. She would like to see it expanded to serve more participants, though that would be dependent on more funding. The alcohol treatment court has a good combination of the long term monitoring and supervision, the treatment, the judicial component, and it offers incentives. Overall, it is a comprehensive program that is able to meet the needs of different individuals because it can be tailored on a case by case basis.

Set Future Meeting Date

Thursday, February 12, 2009, at 12:00 p.m.

Alternate date: February 19, 2009

Davis asked the Workgroup members to think about the ideas, refine suggestions and/or develop a draft comprehensive plan for consideration. Any plan or ideas should be emailed to Luczaj.

The meeting adjourned at 1:29 p.m.